

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION**

GORDON FRANKLIN, JR.,)	
)	
Petitioner,)	
v.)	Civil Action
)	No.09-3272-CV-S-RED-H
VETERAN'S ADMINISTRATION,)	
)	
)	
Respondent.)	

ORDER AND JUDGMENT

Pursuant to the governing law and in accordance with Local Rule 72.1 of the United States District Court for the Western District of Missouri, the petition herein for a writ of habeas corpus was referred to the United States Magistrate for preliminary review under the provisions of 28 U.S.C. § 636(b).

The United States Magistrate has completed his preliminary review of the petition for a writ of habeas corpus and has submitted to the undersigned a report and recommendation that petitioner be denied leave to proceed in forma pauperis, and that the petition be dismissed without prejudice.

Counsel for petitioner thereafter filed a motion to withdraw. Subsequently, petitioner was afforded additional time to file pro se exceptions.

A liberal reading of the exceptions indicates that petitioner contends that he does not have to exhaust administrative remedies and/or he has exhausted administrative remedies many times when he did not have to comply. Regardless of petitioner's blanket assertions, there is nothing in the record to indicate that he has exhausted the proper administrative channels.

Having fully reviewed the record de novo, this Court agrees with the Magistrate that the

petition should be dismissed because of failure to exhaust administrative channels to appeal any decision that the Veteran's Administration has made. Additionally, given that petitioner has failed to assert jurisdictional grounds that would entitle him to habeas corpus relief under 28 U.S.C. § 2241, the Court is without jurisdiction to review petitioner's claim.

Based on the file and records in this case, it is concluded that the findings of fact, conclusions of law, and proposed actions of the Magistrate are correct and should be approved. It is therefore

ORDERED that petitioner's exceptions filed herein be, and they are hereby, overruled. It is further

ORDERED that petitioner be, and he is hereby, denied leave to proceed in forma pauperis. It is further

ADJUDGED that the petition herein for a writ of habeas corpus be, and it is hereby, dismissed without prejudice.¹

/s/ Richard E. Dorr
RICHARD E. DORR
United States District Judge

Date: October 26, 2009

¹The Federal Public Defender's Office has filed a motion to withdraw. Given the status of this case, the motion will be granted.